

BEFORE THE
 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

IN THE MATTER OF
 DICK FIELDS, SR.,

Appellee,

v.

STATE OF WASHINGTON,
 DEPARTMENT OF ECOLOGY,

Respondent.

PCHS No. 79-210

FINAL FINDINGS OF FACT,
 CONCLUSIONS OF LAW
 AND ORDER

THIS MATTER, the appeal of a regulatory order issued under RCW
 90.18.020 of the Water Pollution Act, having come on regularly for
 hearing on the 7th day of April, 1980 in Yakima, Washington,
 and the Honorable Dick Fields, Sr., appearing by his attorney, Kenneth D.
 McLaughlin, and respondent, Department of Ecology, appearing through its
 attorney, Charles E. Boutevaise, with William A. Harrison, hearing
 officer presiding, and the Board having considered the exhibits,
 records and files herein, and having reviewed the Proposed Order of
 the hearing officer filed to the parties on the 24th day of April,

1 1980, and more than twenty days having elapsed from said service; and

2 The Board having received no exceptions to said Proposed Order and
3 the Board being fully advised in the premises; NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 24th day of April, 1980, and incorporated by reference herein and
7 attached hereto as Exhibit A, are adopted and hereby entered as the
8 Board's Final Findings of Fact, Conclusions of Law and Order herein.

9 DATED this 21st day of May, 1980.

10 POLLUTION CONTROL HEARINGS BOARD

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NAT W. WASHINGTON, Chairman

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15 DAVID AKANA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DICK FIELDS, SR.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 79-212

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a regulatory order issued under RCW 90.48.120 of the Water Pollution Act, came on for hearing before the Pollution Control Hearings Board in Yakima, Washington, on April 17, 1980. Hearing Examiner William A. Harrison presided alone.

Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by his attorney, Kenneth D. Beckley.

Respondent appeared by Charles K. Douthwaite, Assistant Attorney General. Reporter Sharon Langford recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From

EXHIBIT A

1 testimony heard and exhibits examined, the Pollution Control Hearings
2 Board makes these

3 FINDINGS OF FACT

4 I

5 This matter arises in Thorp, Kittitas County. It concerns a water
6 course which diverges from and rejoins the Yakima River. The flow of
7 the watercourse in question is in continuity with that of the Yakima
8 River.¹ The watercourse crosses the land of appellant, Fields, and
9 the land of several others.

10 II

11 In the early 1950's appellant began as a "hobby" the process of
12 filling the watercourse with automobile hulks, construction debris,
13 tires, stoves and like materials which were, in places, covered with
14 dirt. Appellant placed these materials directly into the water as the
15 front line of his fill advanced. Materials placed by appellant,
16 and which are now in the water, include those listed above plus
17 demolition debris, wire bales and other discarded materials all
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21 1. Although there was no evidence showing any present use of the
22 channel for industry or irrigation, appellant introduced a written
23 Notice of Water Right, dated June 9, 1880, (Exhibit A-1) for the
24 purpose of showing that the channel is a man made ditch. The ditch
25 described therein commences in Section 3 of T 18N.R.17E.W.M. whereas
26 the channel in question appears to commence in Section 2.
27 Notwithstanding that, the ditch described in the Notice proceeds to "a
Slough to Yakima River" implying that the watercourse in question is
man made for an indeterminate part of its length and natural for the
balance.

constituting junk.

III

Appellant does not dispute that his junk material migrates down the watercourse to the shores of others. This process occurs both because of appellant's direct placement of junk material into the water, and because of the natural action of the watercourse at high water which strips junk material from the face of appellant's fill.

In 1977, an automobile hulk from appellant's fill was carried downstream by the current where it lodged under the bridge of the immediate downstream neighbors. The hulk served to constrict the ordinarily sufficient clearance between the bridge and water surface with the result that other materials became jammed there. In the flooding of that year the hulk and other debris resisted the flood to the end that the force created destroyed the bridge.

The same neighbors have, for each of eight years of occupancy, patrolled the watercourse each spring to remove tires, stove parts, wire bales and other junk material from their shores. This is necessary to protect their 50 or more cattle, sheep and horses, which drink from the watercourse, from cuts or entanglement. These neighbors have had to restrict the swimming activity of their children to a specific location on the watercourse which is constantly watched to detect and remove appellant's migrating junk material.

Appellant's junk materials also release quantities of rust into the watercourse, and would also tend to introduce the grease or dirt inherent in junk material into the water.

Wildlife, such as ducks, have such habitat lost to them as is

covered by the migrating wire bales, tires and other junk materials (appellant.

Appellant urges that beaver dams built downstream of this property in 1979 have resulted in increased water levels tending to introduce more of the junk material into the water. Appellant does not dispute, however, that this is merely a matter of degree. The undammed watercourse, prior to 1979, received very nearly the same quantity of junk materials from appellant as is now the case.

Appellant's junk material has imparted an offensive appearance to the watercourse.

IV

In May, 1979, the immediate downstream neighbors lodged a complaint with respondent, Department of Ecology against appellant. After inspecting the site, respondent issued to appellant a "Notice of Violation" dated September 4, 1979, and alleging that appellant had or was about to violate the provisions of the Water Pollution Control Act, chapter 90.48 RCW. This Notice called for appellant to submit, within 30 days, a full report stating what steps have been and are being taken to control the waste or pollution. Appellant made no response.

On November 27, 1979, respondent issued to appellant an Order, Docket No. DE 79-457, alleging violation of RCW 90.48.080 and requiring a plan for removal of the exposed solid waste and stabilization of the bank with inert materials. This clean up was required over a six-month period. From this Order, appellant appeals.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board makes the following

CONCLUSIONS OF LAW

I

The pertinent statutory provisions are the following:

90.48.080 DISCHARGE OF POLLUTING MATTER IN WATERS PROHIBITED.

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the commission, as provided in this chapter.

90.48.020 DEFINITIONS

. . . Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington. Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. . . .

II

Appellant has both discharged and permitted or suffered the

1 discharge of matter into a water of the state which caused pollution
2 and thus has violated RCW 90.48.080.

3 1. Pollution The automobile hulks, stoves, tires, wire and
4 other of appellant's junk materials, together with rust from the metal
5 materials, have altered the physical properties of the water and
6 constitute the solid substance proscribed by the definition of
7 pollution, RCW 90.48.020, above. Appellant's discharge, or permitting
8 or suffering discharge, of these junk materials has created a
9 nuisance² to his downstream neighbors, has rendered the waters
10 harmful to public safety and welfare, has rendered the waters harmful
11 to recreational use and livestock, and has rendered the waters
12 detrimental to wild birds (ducks) seeking habitat.

13 In addition, the watercourse in question is designated "Class A"
14 by respondent's Water Quality Standards implementing the Water
15 Pollution Control Act. WAC 173-201-080(125) and -070(6).
16 Characteristic uses of Class A waters are wildlife habitat, stock
17 watering, general recreation and aesthetic enjoyment. WAC
18 173-201-045(2)(b). The facts of this case show substantial detriment
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22 2. The facts of this case are within the definition of nuisance
23 set forth at RCW 7.48.010 which we turn to for guidance:

24 ". . . whatever is injurious to health or indecent or
25 offensive to the senses, or an obstruction to the free
26 use of property, so as to essentially interfere with
27 the comfortable enjoyment of the life and property, is
a nuisance . . .

1 to those uses and further constitute a violation of an applicable
2 specific water quality criterion that:

3 "Aesthetic values shall not be impaired by the
4 presence of materials or their effects, excluding
5 those of natural origin, which offend the senses of
6 sight, smell, touch or taste." WAC
7 173-201-045(2) (c) (viii)

8 The respondent is required "to control miscellaneous water quality
9 effect sources" to achieve and maintain the water quality called for
10 by such criteria. WAC 173-201-090 and -100(2).

11 2. Waters of the State. As defined in RCW 90.48.020, above,
12 "waters of the state" include not only "rivers" but "all other surface
13 waters and watercourses within the jurisdiction of the State of
14 Washington." This definition is sweeping. It does not distinguish or
15 exclude man-made watercourses as appellant urges. The watercourse in
16 question, which diverges from and rejoins the Yakima River, is a water
17 of the state.

18 III

19 Appellant was shown to have violated RCW 90.48.080 for which a
20 regulatory order pursuant to RCW 90.48.120 was properly issued.
21 Accordingly, the action of the Department of Ecology should be
22 affirmed.

23 IV

24 Any Findings of Fact which should be deemed a Conclusion of Law is
25 hereby adopted as such.

26 From these Conclusions the Board enters the following

27 ORDER

The Department of Ecology Order, No. DE 79-457, is hereby affirmed.

1 DONE at Lacey, Washington, this 24th day of April, 1980.

2 POLLUTION CONTROL HEARINGS BOARD

3 *William A. Harrison*

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5 WILLIAM A. HARRISON
6 Presiding Officer
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